

# General Terms and Conditions

## 1. General

Our General Terms and Conditions (GTC) apply exclusively. Client's terms and conditions which are contrary to or deviate from our General Terms and Conditions are not recognized unless their validity is explicitly c ur General Terms and Conditions also apply even if we deliver to clients without reservation, in the knowledge of the client's contrary terms and conditions. These GTC are also valid in future business relationships with the client even if they have not been explicitly agreed upon again.

## 2. Proposal - Order Confirmation

Our proposals are subject to change without notice unless otherwise stated in our order confirmation. Each order is accepted by us following our written order confirmation or by shipping the goods.

## 3. Orders

Every order requires an exact description of all of our product's details. We assume no liability for errors and damage caused by inaccurate or incomplete ordering details.

## 4. Prices

Unless otherwise stated in the order confirmation, our prices in the order confirmation are ex-factory prices and exclude packaging, transport costs, insurances, contributions, customs duty, fees and are without value added tax. Value added tax is charged separately in the invoice according to the legal rate on the invoice date. We reserve the right to change prices appropriately should price reductions or increases, especially due to wage settlements, changes in the price of materials or currency fluctuations, be incurred. Proof of such changes will be provided for the client on request.

## 5. Payment Terms - Balancing

Payments are due for payment without discount and must be made within 21 days from the invoice date net cash; money receipt is decisive for complying with this term. Alternatively the customer may give us a SEPA direct debit mandate. In this case the unconditional credit note in our accounts is decisive for complying with this terms. For the SEPA pre-notification a period of 5 calendar days applies. The customer assures to provide the funds in the account. Costs incurred due to non-payment or reversal of the debit shall be borne by the customer, as long as the non-payment or the reversal was not caused by us. Even without giving reasons we are entitled to demand payment in advance for individual customers or for individual transactions.

If the goods were not paid 30 days after due date and receipt of the invoice the client will be in default without the necessity for a reminder. In this case we are entitled to charge interests after the due date at a rate of 9 percentage points above the relevant basic interest rate of the German Federal Bank. Should the client, who is not a consumer, have payment arrears, we are entitled to charge default interest and a cash lump sum according to §288 BGB (German Civil Code) for payment claims. Should we be able to prove higher damages due to arrears, we are also entitled to claim these. The customer is only entitled to any rights of offset if his counterclaims have been legally established, are undisputed, or have been recognized by us. The client does not have the right of retention due to disputed counterclaims. Should the invoice be regulated via a purchase centre or purchasing pool, this is only possible with our express consent.

## 6. Delivery Periods

Fulfillment of our delivery duties requires the punctual and proper fulfillment of the client's duties. The right to defense on the grounds of an unfulfilled contract is reserved. Should the client default in accepting the goods delivery or breach other cooperation duties, we are entitled either to withdraw from the contract or claim compensation for any increased costs incurred up to that time without setting a further deadline. The right to make further claims is reserved. Furthermore, in such cases, the risk of coincidental destruction or a coincidental deterioration in the quality of the delivered goods is transferred to the client in the case of default in accepting such goods or payment arrears. Acts of God or stoppages (due to insufficient supplies of material, industrial disputes, etc.) entitle us either to demand an appropriate extension of delivery periods or to partly or entirely dissolve the delivery contract. This does not give the client the right to claim damages. We have fulfilled delivery periods if the delivery item has left our factory or the client has been informed of the goods' readiness for delivery within such delivery period. Delivery periods stipulated by the client are not recognised by us unless they form part of our order confirmation. We adhere to legal terms and conditions in cases where, as a result of an undue delay in delivery for which we are liable, the client is entitled to claim that his interests in a continued fulfillment of the contract have ceased. We also adhere to legal terms and conditions should a delay in delivery be caused by deliberate or grossly negligent action by us or our representatives for which we are responsible. We are also responsible for such actions by our representatives or agents. Should the delivery delay not be caused by our deliberate infringement of contractual duties for which we are responsible, our liability is limited to damage which is regarded as typical for that case. We are liable according to the legal terms and conditions if and in so far as the delivery delay for which we are responsible is caused by an infringement of a substantial contractual duty. In such cases, our liability is also limited to damage which is regarded as typical for that case. Should the delivery delay be caused by a culpable infringement of non-substantial contractual duties, our client is also entitled to claim a one-off damage compensation worth 3 percentage points of the delivery value of the goods for each week's delay, up to a maximum which is no higher than 15 percentage points of the delivery value of the goods.

## 7. Delivery – Instruction/Export

In the case of the delivery of devices for the medico-technical industry which require assembly and/or instructions for the final customer using specialist trade personnel we reserve the right to deliver the goods exclusively to the relevant specialist traders. Should the trader not carry out assembly and/or instruction for the final customer, this is carried out by us. In such cases, we reserve the right to charge the client for the additionally created costs. Our specialist traders operate a recording system so that, if necessary, our products can be traced to the final customer. The specialist trader undertakes to immediately report to our safety officer all events and risks which must be reported in connection with our products. The export from the Federal Republic of Germany is subject to the current export regulations. The export of goods to non-EU countries requires written permission from us. Furthermore the client himself is responsible for obtaining all official import or export authorisations required.

## 8. Passage of Risk - Packaging

Unless otherwise stated in our order confirmation, delivery is agreed ex-factory. The risk of the goods' damage or loss is therefore transferred to the client as soon as the goods leave the factory or the client is in default of acceptance of the goods. This also applies to cases where we confirm prepaid carriage. Transport packaging and all other packaging according to the packaging regulations is not returnable. Our client is responsible for disposing the packaging at its own cost. Our deliveries are insured by us at the client's expense unless explicitly otherwise agreed. No insurance is arranged in the case of goods which are collected by our clients. In the case of transport damage, claims are only handled if the client receives confirmation of any damage, reduced weight or loss by the shipping company before accepting the delivery.

## 9. Warranty

The client is responsible for examining the delivered goods immediately after receiving them to determine any eventual deficiencies or delivery errors, and to report these immediately. Should the client fulfil this examining and reporting responsibility, we shall be liable to the client within the scope of legal regulations. Our period of warranty shall be two years (statute of limitation) up from the date of transfer of risks or the day of delivery, except for second-hand devices, spare parts and repairs (in this case the period of limitation is one year). Our client can make use of the two years warranty as follows, so long as he can provide first buyer proof (in the form of an invoice or delivery note) and provided that the product still has the original, unchanged serial number. For our liability for defects then applies in addition:

- We choose whether to fulfil our guarantee by providing repair services free of charge - either on the client's premises or in our factory - or replacing the product. We can also provide these guarantee services through an authorised company.
- Should a product be returned to us, the client agrees to send the product in its original or similar packaging, offering the same protection as the original packaging, to our address or any address notified by us.
- Our guarantee ceases to apply if changes of any kind have been made to our product, unless such changes have been made by us or a company authorised by us, or have been previously agreed upon in writing by us. Our guarantee also ceases to apply if third parties have carried out repairs to our products or replaced parts thereof. This applies regardless of the fact whether these measures individually or collectively led to a deficiency of the product:
- We accept no responsibility for defects caused by
  - operational wear and tear;
  - incorrect installation or incorrect or insufficient maintenance by the customer or third parties;
  - improper use or operating faults (in contradiction to the operating instructions delivered with the product)
  - inappropriate or negligent handling and care, especially with respect to dirt, lime, suction of fluids, inappropriate cleaning and sterilization
  - using accessories and/or replacement parts, which are not explicitly approved;
  - incorrect assembly and/or initial operation by the client or third parties;
  - the client's negligence in handling the product;
  - unacceptable operating conditions, such as humidity, temperature, the power supply, vibrations, insufficient ventilation; or - accidents, acts of God, or any other causes for which we are not responsible especially lightning, water, fire, public unrest.
- We are not liable for damage to other objects apart from our product itself, except in the case of any deliberate or grossly negligent actions by us or our representatives or agents. Should no deliberate breach of contract be claimed, our liability is limited to damage which is regarded as typical for that case. This also applies in the case of our culpable infringement of substantial contractual duties The indispensable conditions of German Liability Law remain unaffected thereby.
- In special cases the return of goods is excluded. Examples are goods made to customer's specifications, sterile goods or second-hand products.

## 10. Reservation of Ownership

We retain ownership of our goods until the receipt of all payments arising from the business relationship, including all demands arising from installation orders, subsequent orders, repairs, accessory deliveries and replacement orders. Should we have agreed upon payment on the basis of cheque and bill transactions, the ownership reservation applies until the cheque received by us has been paid in, and does not expire through our credit upon receiving the client's cheque. In the case of a breach of contract by the client, especially payment arrears, we are entitled to repossess our goods. Repossession of our goods does not represent a withdrawal from the contract, unless explicitly declared in writing by us. We have the right to utilise the product after its repossession, whilst the income from such use is balanced against the client's arrears, after deducting appropriate utilisation costs. The client is responsible for handling the goods with care. Should maintenance and inspection work be necessary, the client must carry these out punctually at his own cost. Our client is entitled to sell the goods he has bought from us in a proper sales transaction. However, he must immediately assign all outstanding claims to the value of the final invoice sum (including value added tax) of our claims to his customers or third parties. The client is entitled to collect this claim even after such assignment. Our right to collect the claim ourselves remains unaffected thereby. We undertake to release the securities to which we are entitled if requested to do so by the client should the realisable value of our securities be more than 10 percentage points higher than the outstanding claims. We reserve the right to choose the securities to be released.

## 11. Plans and Illustrations

We reserve all proprietary, copyright and industrial property rights to plans and drawings, illustrations, technical documents, calculations and other documents attached to our offers, including in electronic form. In particular this applies to such documents which are specified as confidential. The client must receive explicit written permission before passing these on to third parties. If the software is part of the delivery scope, the client receives a non-transferable and non-exclusive right of use of the software. All other rights to the software are reserved by ATMOS. Imitating our legally patented products is forbidden and will be prosecuted.

## 12. Jurisdiction and Place of Performance

Our registered office is the place of performance for all disputes in connection with these General Terms and Conditions and the contracts closed with clients under them. This jurisdiction excludes other jurisdiction relating to persons or subject-matter. Furthermore, our client is not entitled to bring charges against us in another court should he submit a counterclaim, carry out counterbalancing or declare retention. We, however, are entitled to bring charges against our client at their general place of jurisdiction or at another relevant court recognised by German or foreign law. Unless otherwise stated in the order confirmation, our registered office is the place of performance.

## 13. Applicable law

These GDT and all legal relationships between the client and ourselves are subject to the law of the Federal Republic of Germany. The application of the UN Sales Convention is excluded.

## 14. Final Provisions

The client hereby gives his consent that in conjunction with the conclusion of the contract the data received in connection with the business relationship may be recorded, saved and transmitted to third parties provided that this is necessary for the fulfilment of the contract (e.g. to insurance companies, banks and public authorities for legally required notifications)

In this context we refer to the current valid data protection regulations which are available on the ATMOS homepage.

The invalidity of individual clauses of these GTC does not affect the validity of the entire GTC.

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